

Comments on FCC Docket N° 11-43

This response pertains to the FCC's 2011 Notice of Proposed Rulemaking N° 11-43 on reinstatement of requirements for what the FCC calls video description (known generically as audio description).

Permanent location

This submission is permanently located at joelclark.org/fcc2011/.



Exemptions

Apart from “live or near-live programming,” no programming types or categories or broadcasters should be exempt. This in fact means that *prerecorded* programming on networks that air large quantities of live programming (sports networks are an easy example) would be covered by the regulation.

The principle here is that blind people, by statute, deserve and can expect equal access to programming – admittedly to only a small fraction of it, but access nonetheless. It is no one's place, and certainly not the FCC's, to dictate which program genres blind people may *not* enjoy with audio description. Sighted people can watch whatever they want; within the quantity limits of the legislation, blind people deserve the same right.

(It should go without saying that limiting the number of hours of audio description is, on any constitutional or legal basis, a complete non-starter, but that is what the legislation requires at present. A separate proceeding will be necessary to enforce full access in terms of *quantity* of described programming; this section deals with *genre* of programming.)

Near-live programming

Broadcasters should be explicitly barred from pretending that a prerecorded program that is received close to airtime is a “near-live” program, hence exempt from any requirement to describe it. It may or may not be practicable to produce an audio-description track for such a program, though at least two description providers I know of are capable of same-day turnaround. The *practicality* of describing a late-arriving show that is indisputably prerecorded is an issue different from designating such a show as “near-live,” which it isn’t.

This exemption needs to be rewritten to close that loophole.

Quality standards

The issue of audio-description quality is a minefield into which the FCC has stumbled like a drunken sailor. The Notice’s ¶G(29) is scattershot and prejudices a number of issues.

- There *are* no quality standards for audio description because the Open & Closed Project, which would research and develop same, has not been funded.

Nonetheless, every audio-description provider that isn’t a fly-by-night operation (like a tape house) operates from the same principles. Whether they want to admit it or not, those principles coincide with my list of standard techniques in audio description, online for *ten full years* and still unchallenged.

- It is alarming that the FCC would float a requirement “that video description not conflict with dialogue or other important audio in the program.” We’ve been describing TV shows for 20 years and we know what we’re doing. And one thing we know how to do is judiciously decide when description is more important than dialogue or sound effects. We’re here to *explain what’s happening to blind people*, not to meekly chirp up

whenever there's half a second of silence and then go away.

If all you know of audio description is a five-minute demo or somebody's claim that description happens during pauses in dialogue, then you have so little real-world experience that you shouldn't even be part of this discussion. The Commission suggests it is in that category. We can and will clobber dialogue and talk over sound effects if that's what it takes to make a program accessible.

What's the alternative here? Not telling the viewer who picked up a gun just because somebody else in the scene won't shut up while it's happening?

- The Commission floats another alarming requirement, "that video description... be synchronous with the action it is describing." Somebody must be new around here. While this is a particular fetish of one marginal Canadian description provider, in reality there is no way to talk over an event 100% of the time. Think about this for more than ten seconds, please. What if the event is *really loud*? Why can't we predescribe or postdescribe instead of competing with the sound of an explosion or a gunshot? We already do that, and it's the only available option.

If taken to extremes, we couldn't describe through opening title sequences because we'd have to sit there waiting for each credit to appear before reading it. We couldn't set up a scene and just let it unfold (thereby avoiding describing over dialogue) or honour the intent of a program and let a surprising thing happen, then explain the surprise.

Also, would somebody care to explain how we're going to describe "synchronous with the action" but also never ever when any character is already talking?

If these regulations don't prevent NBC from making a mockery of them, they will have failed

NBC, always contemptuous of its disabled audience, uses the worst and cheapest captioning available (that of CaptionMax, which “won” the initial contract via reverse auction). During the earlier period of mandatory audio description, NBC was notorious for doing two things:

1. Describing almost nothing but kids' shows. While technically permissible, that was never the intent of the regulation.
2. Hiring tape houses and other incompetent nonexperts to sit there yammering extemporaneously into a microphone. NBC passed off these recordings as actual video description, which they weren't.

If the FCC's new regs aren't tough enough to stop NBC, and cheapskates like it, from taking the least expensive route possible and piling up audio-description hours where barely anybody is watching, the regs will have failed.

Under no circumstances whatsoever should “the industry” develop standards

If we're defining “the industry” as broadcasters and others covered by the regulation, let me be the first to tell you that broadcasters are the *least* capable of writing standards. As the FCC has tacitly acknowledged, broadcasters don't want to do audio description in the first place, which explains why barely any do. Broadcasting reps took the FCC to court to overturn the previous description requirement and won. Broadcasters didn't get into this business to help cripples (they're here to serve advertisers) and will do the absolute minimum most of the time. And they'll seethe with resentment while doing it.

Allowing broadcasters to write standards for disabled people makes as much sense as allowing tobacco manufacturers to write standards for cancer treatment. Broadcasters are *a problem* it took legislation to solve.

And at any rate, has anyone, even paid lobbyists *for* the broadcasters, attested that they know the first thing about the topic? Do they have any interest whatsoever in taking on a project like this? I can tell you the rest of us have no interest in letting *them* do so.

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